in failing to detect the forgery. It is the second that is the crucial question: Did the certificate appear on its face to be a certificate signed by Balwant Singh?

The customer's contention can be stated in a sentence. The signature was not that of Balwant Singh but of the customer on whose behalf Balwant Singh wrote his name upon the document in a representative capacity only.

Where a natural person's holograph signature to a document which creates contractual rights is associated with a reference to his being a director or manager of a corporate person, it may sometimes be a difficult matter to determine whether he is signing it in a personal capacity and the reference is merely descriptive of him or whether he is signing in a representative capacity only, and not in a personal capacity at all. In their Lordships' view there is no such difficulty in the instant case. Not only is the body of the certificate couched in the first person singular "I, Balwant Singh", but even more significant, at the end of the certificate, after the words "Yours faithfully" and thus as much part of the signature itself as the rubber-stamped words "Gian Singh & Co. Limited" and "Director", are the type-written words: "I, Balwant Singh, Passport No. E-13276 issued at 11th November 1964". This, in their Lordships' view, puts it beyond doubt that the rubber-stamped words are to be understood as words of description only.

Even apart from this, however, their Lordships agree with the majority of the Court of Appeal that the only requirement of the documentary credit is that the certificate should bear the actual holograph signature of Balwant Singh. It does not require that the certificate shall be the certificate of Balwant Singh, but merely that whoever else the certifying party might be the certificate should be signed by him. It was. So the literal requirement of the credit was complied with. There was no reason discernible upon a mere reading of the terms of the credit for construing the requirement that the certificate should be signed by Balwant Singh otherwise than literally. The notifying bank did as it was told; so the issuing bank is safe.

The appeal must be dismissed with costs.

Appeal dismissed.

Solicitors: *Linklaters & Paines; Parker Garrett & Co.*

SINGAPORE REPORTS

ISMAIL BIN U.K. ABDUL RAHMAN v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Winslow and Choor Singh JJ.) May 13, 1974]

[Singapore — Criminal Appeal No. 8 of 1973]

Criminal Law and Procedure — Murder — Defence of intoxication — Intention to kill — Cautioned statement — Criminal Procedure Code, (Cap. 113) Sch. E — Evidence — Confession — Retraction — Alibi — Rebuttal — Accomplice or interested witness — Penal Code, ss. 85 and 302.

Penal Code, ss. 85 and 302 — Murder — Defence of intoxication.

The appellant was convicted for the murder of one Karubbun Velusamy, a male Indian who died of severe head injuries. The prosecution relied on circumstantial evidence in the testimony of two witnesses, Muthukamaru and Mohamed Misha and on a cautioned statement (amounting to a confession) made by the appellant to the police shortly after his arrest 16 days later. At the trial, the appellant retracted his confession and raised the defence of an alibi. The trial judges accepted the evidence of the confession as voluntary and true, and rejected his defence.

On appeal, the appellant alleged, *inter alia:* (1) that the evidence of Mohamed Misha should have been rejected in the absence of corroboration as he had been arrested in connection with the murder before the appellant was arrested and was later released after he had identified the appellant at an identification parade. As such, he was an accomplice or at least an interested witness;

(2) that the cautioned statement should not have been given any weight because the officer recording it was also the investigating officer and therefore had an interest in the matter;

(3) that no weight ought to have been attached to the cautioned statement which was a confession as it had been retracted;

(4) that the appellant's defence of alibi had been inadequately considered in that as the prosecution had failed to call evidence in rebuttal of the alibi, the trial judges, even if they disbelieved the appellant's evidence, should have considered whether it was probable that the appellant was somewhere else at the time of the attack on the deceased;

(5) that the trial judges had failed to give adequate consideration to the fact that the appellant was drunk at the time of the attack and accordingly was incapable of forming the intention to kill.

Held: (1) there was no evidence at all on which the witness Misha could be considered an accomplice and thus no corroboration was required;

(2) there was no requirement in the Rules in Schedule E of the Criminal Procedure Code that an accused person should be formally charged by a police officer unconnected with the case;

(3) an accused person could be convicted on his own confession, even if it was retracted, if the court was satisfied that it was made voluntarily and that it was true and there was no requirement of corroborative evidence to support it;

(4) the appellant's alibi was based entirely on his own evidence, and was rightly rejected as it was disbelieved by the trial judges;

(5) there was insufficient evidence to support the defence of intoxication laid down in section 85 of the Penal Code. The bare statement of the appellant that he was drunk was inadequate to negative the intention to kill;

(6) there was ample evidence before the trial judges to establish beyond a reasonable doubt that the appellant had murdered the deceased and the appeal was therefore dismissed.

Cases referred to:-

(1) *Yap Sow Keong* v. *Public Prosecutor* [1947] M.L.J. 90 at page 91.

(2) *Osman & Anor.* v. *Public Prosecutor* [1967] 1 M.L.J. 137.

COURT OF CRIMINAL APPEAL.

R. Murugason for the appellant.

Tan Teow Yeow (Deputy Public Prosecutor) for the respondent.

Choor Singh J.: The appellant was tried, convicted and sentenced to death by the High Court in Singapore on a charge under section 302 of the Penal Code for the murder of one Karubbun Velusamy on the 1st February 1973 at about 3 a.m. at P.U.B. quarters, Jalan Berseh, Singapore.

We dismissed his appeal against the decision of the High Court and indicated that we would give our reasons in writing at a later date which we now do.

The deceased Karubbun Velusamy was a well nourished male Indian whose right arm had been amputated below the shoulder at some time long before his death. On the morning of the 1st February 1973 he was found lying dead on his canvas bed near the door of Block E of the P.U.B. quarters at Jalan Berseh, Singapore. He had very severe head injuries. There was an irregular laceration 6 cm. long at the right temporal region exposing the skull beneath, a horizontal laceration lower down at the right temple 4 cm. long, another horizontal irregular laceration 6 cm. long above the right eyebrow and an irregular laceration 4 cm. long on the right cheek. An autopsy performed by a Government pathologist revealed a large area of diffused comminuted fracture 10 x 6 cm. involving the right frontal bone and also the right supraorbital ridge with a large bone fracture. There was also a fracture of the right cheek bone and a crack fracture extending from the left frontal bone across the orbital plate. The pathologist certified the cause of death as "fractured skull".

At the trial, to prove their case against the appellant, the prosecution relied on the evidence of two witnesses named Muthukamaru and Mohamed Misha and on a cautioned statement made by the appellant to the police shortly after his arrest.

Muthukamaru's evidence was that on the night of the 31st January 1973 he went to sleep on the ground floor of Block E of the P.U.B. quarters at Jalan Berseh; that he was sleeping near the entrance to Block E; that the deceased was sleeping on a canvas bed near the door of Block E; that between 2 a.m. and 3 a.m. that night *i.e.* on the morning of the 1st February, he was awakened by the noise of something being beaten; that on waking up he saw the door at the entrance moving; that he got up and came out of Block E; that he saw the appellant walking away from the entrance of Block E; that the appellant saw him, turned around and looked at him; that the appellant was holding an object, three or four feet long, which looked like a stick; that after looking at him the appellant asked him in Tamil whether he "wanted a similar thing"; that he exclaimed "Dai" and motioned to the appellant to go away; that instead of going away the appellant entered Block E; that he then heard two sounds of beating, similar to the sound which he had heard earlier, coming from the direction where the deceased was sleeping; that the appellant then came out of Block E carrying the same long object; that he saw the appellant walk away towards the Cleansing Department quarters across the road from Block E; and that he saw the appellant go up the stairs of the Cleansing Department quarters and disappear. Muthukamaru stated that he then entered Block E and saw that the deceased was lying on his canvas bed with his right leg over his left leg; that the right leg was quivering; and that when shortly afterwards the right leg stopped quivering he was certain that the deceased was dead. Later at about 6.15 a.m. when there was daylight, he saw that the deceased's head was "smashed up".

Mohamed Misha's evidence was that on the 1st February 1973 at about 10 a.m. he met the appellant in Syed Alwi Road and the appellant told him that he had beaten up a person with one arm with a stick and requested him not to tell anyone about it.

The appellant was arrested on the 17th February 1973 and on the same day Inspector Michael Won charged him with the murder of Karubbun Velusamy. After the formal charge had been read out and explained to the appellant through an interpreter, the usual caution was explained to him. The appellant, in answer to the charge, made a statement in the following terms:

"Two days before the incident I was walking near a block of building opposite the P.U.B. quarters at Jalan Berseh. I was drunk. I accidentally banged the deceased. He scolded me in Tamil using abusive words. I asked him why he was using such words to me when I had collided with him accidentally and I apologised. He told me not to bluff him and he knew everything. He thought that I was one of the residents there. He was not in good term with those people staying there. I told him that I was not staying there and that I had not bang him on purpose. He told me that I can do whatever I wanted. I then pushed him and walked off. On 1st February 1973 at about 2 a.m. I was walking along Syed Alwi Road Market. I was drunk. I thought of the deceased. I took a piece of wood intending to hit him with it only. I went to Block E Jalan Berseh with the piece of wood. I saw the deceased and another man sleeping under the staircase of the ground floor of Block E. I hit him. The other man woke up. I hit the deceased three times on his head. When the other man woke up I left the scene."

The appellant's defence was an *alibi*. He gave evidence on oath. He retracted the cautioned statement he had made to Inspector Won in answer to the charge of murder. His evidence was that on the night of the 31st January 1973 he went to Jalan Sultan at about 11 o'clock. There he joined one Isa and one Thamby and two girls who were eating and drinking liquor. He ordered some food and an empty glass and someone poured beer into his empty glass. He talked to the girls and Isa became jealous and an argument arose between him and Isa which ended by Isa and Thamby assaulting him. He received two or three punches on the face. He apologised to them and they stopped assaulting him. He then left the place and walked to No. 44 Sam Leong Road some half a mile away where his girl friend named Azizah lived. He arrived there at around midnight. He slept there that night and did not get up till 10 a.m. the following morning. After he had taken a shower he dressed and

left the house. On the way to a coffee shop he met Mohamed Misha at the junction of Verdun Road and Syed Alwi Road. Misha asked him what had happened to his face and he replied that it was a small matter and that he had been punched at Jalan Sultan the previous night. He denied that he told Misha that he had beaten a one-armed man with a stick. That afternoon he read in the New Nation of the death of a one-armed man at Block E, Jalan Berseh. He was the only defence witness.

The trial judges accepted the evidence of Muthukamaru and of Mohamed Misha as true. They considered the whole of the evidence in this case and came to the conclusion that the accused's statement to the police as to how he hit the deceased on the head while the deceased was asleep was true. They disbelieved the appellant's evidence that he was asleep at 44 Sam Leong Road at the time when the deceased was attacked. Being satisfied, beyond a reasonable doubt, that the prosecution had proved their case against the appellant, the trial judges convicted him on the charge of murder and sentenced him under section 302 of the Penal Code to suffer death.

Before us, counsel for the appellant submitted that Muthukamaru was an unreliable witness; that he had failed to identify the appellant at the identification parade held by the police; that there were serious discrepancies in his evidence and that therefore the trial judges should not have placed any reliance on his evidence.

Muthukamaru had stated in his evidence that he recognised the appellant at the identification parade but was afraid to identify him because the appellant had pointed a finger at his own chest. The trial judges accepted this explanation. As regards discrepancies in his evidence the trial judges have indicated in their judgment that they were aware of such discrepancies and that they considered them as minor discrepancies which did not affect their view as to the truthfulness of this witness. They gave very careful consideration to his evidence, for they have stated:

"We were also satisfied that there was sufficient light for Muthukamaru to see the face of the accused outside Block E. Muthukamaru had seen the accused in that area a number of times before the 1st February. The accused admitted that at one time he used to visit Block E in that area. We were sure that Muthukamaru did not make a mistake in his identification of the accused as the person whom he saw that morning."

The trial judges saw and heard Muthukamaru who was cross-examined at great length by counsel for the defence and they also examined his evidence in the light of the rest of the evidence in this case. In our judgment, on the evidence before them, the trial judges were justified in coming to the conclusion that Muthukamaru was a truthful witness.

It was next urged upon us by counsel for the appellant that the evidence of Mohamed Misha should not have been accepted by the trial judges. It was contended that Misha was arrested in connection with this crime before the appellant was arrested; that upon Misha identifying the appellant at an identification parade, Misha was released after six days' detention; that Misha was an accomplice or at least an interested witness and that in the absence of corroboration, his evidence should have been rejected.

Although counsel for the appellant did not say so, the implication of his submission was that Misha obtained his own release by falsely implicating the appellant in this crime. This very submission was made to the trial judges and they have dealt with it as follows:

"We can see no reason why Misha should lie about the accused. We reject the suggestion of defence counsel that Misha lied because he was anxious to be released by the C.I.D. We were of the view that Misha was speaking the truth and we accepted his evidence."

There was no evidence at all on which Misha could be considered an accomplice and the submission that the trial judges should not have accepted his evidence in the absence of corroboration was groundless.

The next submission was regarding the cautioned statement made by the appellant to the police. At the trial, when this statement was tendered in evidence, objection was taken by defence counsel that it was inadmissible and that issue was duly tried. The trial judges ruled the statement to be admissible in evidence as being a voluntary statement, the making of which was not caused by any inducement, threat, promise or force.

Before us, it was contended that as the statement was recorded by the police officer who was investigating this crime, the trial judges should not have given it any weight because the said officer, being the investigating officer, had an interest in the matter. It was suggested that the statement should have been recorded by some other police officer unconnected with the case. The evidence shows that the statement was made by the appellant in answer to the formal charge of murder when it was explained to him and he was duly cautioned. It was the duty of the officer who read out the charge to the appellant to take down in writing whatever the appellant said in answer to the charge and this was according to him exactly what he did. His evidence was accepted by the trial judges. The submission of counsel for the appellant was therefore entirely without merit. There is no requirement in the Rules in Schedule E of the Criminal Procedure Code, more often called "the Judges' Rules", that an accused person should be formally charged by a police officer unconnected with the case.

The next contention was that the cautioned statement amounted to a confession and as the appellant had retracted it at the trial, no weight ought to have been attached to it. It was urged upon us that a retracted confession should not be acted upon and made the basis of a conviction unless the same is corroborated. We were unable to accept this submission. The law applicable to retracted confessions was stated clearly by the Malayan Union Court of Appeal in the case of *Yap Sow Keong* v. *Public Prosecutor*,[1] at page 91:—

"In our view the law as to the admissibility of retracted confessions in evidence is clear, and put shortly it is that an accused person can be convicted on his own confession, even when it is retracted, if the court is satisfied of its truth. We do not agree with those Indian decisions which lay down that before a person can be convicted on his retracted confession there must be corroborative evidence to support it."

This view of the law was adopted by this court in *Osman and another* v. *Public Prosecutor*.[2] The trial judges having found that the cautioned statement was made voluntarily and that the appellant's admission therein that he hit the deceased on the head while the deceased was asleep was true, they were entitled to act on it.

The next submission was that the appellant's defence was inadequately considered by the trial judges. It was contended that as the evidence against the appellant was entirely circumstantial and as the prosecution had failed to call evidence in rebuttal of the appellant's *alibi*, the trial judges, even if they disbelieved the appellant's evidence, should have gone further and considered whether it was probable that he was somewhere else when the deceased was attacked and killed.

The appellant's evidence was that on the night in question, at the time the deceased was attacked, he was asleep in the room of his girl friend named Azizah, at 44 Sam Leong Road, Singapore. The appellant did not call Azizah nor any other occupant of that house. He claimed that Azizah had removed from that address and could not be found. The appellant's *alibi* was therefore based entirely on his own evidence. As the trial judges disbelieved his evidence that at the time of the attack on the deceased he was asleep at 44 Sam Leong Road, his *alibi* was rightly rejected. Furthermore, it is not correct that the evidence against the appellant was entirely circumstantial. In his cautioned statement to the police, the appellant had admitted attacking the deceased with a piece of wood. This was direct evidence from the appellant's own mouth which the trial judges believed to be true and it was sufficient to support his conviction.

The next submission was that the trial judges failed to give adequate consideration to the fact that the appellant was drunk at the time he attacked the deceased; that accordingly he was incapable of forming the intention to kill and that he should therefore have been convicted of the lesser offence of culpable homicide not amounting to murder.

There were only two references to liquor in the whole case. First, there was the evidence of the appellant that on the night in question at about 11 p.m. at Jalan Sultan he joined one Isa and one Thamby and two girls who were eating and drinking liquor. He ordered some food and an empty glass and someone poured beer into his empty glass. He did not say that he consumed the beer and if so how much beer he consumed. The other reference was in his cautioned statement to the police when he stated: "On 1st February 1973 at about 2 a.m. I was walking along Syed Alwi Road Market. I was drunk." He did not disclose what he drank, the quantity he drank or the state of his intoxication. The trial judges dealt with this question in their judgment as follows:

"We had also considered the question of drunkenness. The only evidence that the accused consumed liquor came from the accused himself that he had some beer at Jalan Sultan on the night of the 31st January 1973. In his cautioned statement he said that he was drunk on the 1st February 1973, at about 2 a.m. In the circumstances of this case we were of the opinion that the accused could not rely on the defence of intoxication as provided by section 85 of the Penal Code."

We agree with the trial judges that the evidence before them was insufficient to support the defence of intoxication laid down in section 85 of the Penal Code. In our judgment the bare statement of the appellant that he was drunk was inadequate to negative the intention to kill and this ground of appeal also failed.

Lastly, it was submitted that the appellant had no intention to kill the deceased; that had he wanted to kill, he would have used some deadly weapon such as a knife; that the fact that only a piece of wood was used negatived the intention to kill and that the appellant should therefore have been convicted of causing grievous hurt or at the highest of culpable homicide not amounting to murder.

The serious injuries suffered by the deceased, all on the head, as a result of several blows, resulting in three distinct fractures of the skull, which caused death within a matter of minutes, was ample evidence of intention to kill. In our opinion this ground of appeal was entirely without merit.

In our judgment, there was ample evidence before the trial judges which proved beyond a reasonable doubt that the appellant had caused the death of the deceased in circumstances which amounted to murder under section 300 of the Penal Code and we therefore dismissed his appeal.

Appeal dismissed.

Solicitors: *Murugason & Co.*

VAYNAR SUPPIAH & SONS v. K.M.A. ABDUL RAHIM & ANOR.; OWNERS OF "LEXA MAERSK" & ORS. v. K.M.A. ABDUL RAHIM & ANOR.

[C.A. (Wee Chong Jin C.J., Chua and Winslow JJ.) May 28, 1974]

[Singapore — Civil Appeals Nos. 9 and 11 of 1973]

Carriage of Goods by Sea — Contract — Carriers — Bill of Lading — Damage to goods — Reports by surveyors — Maker of report not called — Admissibility — Evidence Act (Cap. 5), s. 32.

The plaintiffs were the holders of clean bills of lading in respect of goods shipped from Karachi to Singapore on board two ships owned by the first defendants. The second defendants were lighterers who, as independent contractors, conveyed both sets of cargo from ship to shore by means of lighters. The plaintiffs successfully contended in the High Court ([1973] 2 M.L.J. 121) that the goods on board one ship, the "Lars" cargo, were damaged by sea water during the ocean voyage, and that consequently the first defendants were liable for that damage. The first defendants were also held liable in respect of damage to the goods which had been carried on board the other ship, the "Jens" cargo, since, while the damage occurred through rain during the lighterage phase, the goods had not yet been "discharged" and the first defendants continued to be responsible for the goods under the Hague Rules. The second defendants were found liable to the plaintiffs in respect of damage to the "Jens" cargo and were also held liable to indemnify the first defendants in respect of all monies which the first defendants would have to pay the plaintiffs in consequence of that damage. In reaching its decision on the "Lars" cargo, the court relied almost completely on the Herring report of a firm of professional cargo surveyors, despite the objections raised by both defendants as to its admissibility, and neither the surveyor who undertook the survey nor the survey clerk (who were the only persons in the firm to have examined the goods in